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APR 8 4 2005

April 1, 2005

In re application of : Robert M. Carmichael

Serial No. : 09/730,116

Filed : December 5, 2000

For : **ACTIVE CONTROL RELEASABLE BALLAST
SYSTEM FOR USE WITH DIVE EQUIPMENT**

Examiner : Ajay Vasudeva

Art Unit : 3617

Our File No. : 1010.6817

DECLARATION OF ROBERT M. CARMICHAEL

Robert M. Carmichael, the applicant in the above-identified patent application, declares as follows:

1. I am the applicant for the above-identified application.
2. I am co-owner of Halcyon Manufacturing, Inc. ("Halcyon") and on and before August 22, 2000, I was the President, CEO and sole owner of Halcyon.
4. Approximately in 1999, well before July 31, 2000, I conceived of an Active Control Ballast system ("System"), using a side release buckle for dropping weights from dive gear. The System corresponds to the invention claimed in the above-identified application and certain embodiment(s) of my claimed invention are illustrated in the August 22, 2000 Halcyon website page printout previously cited by the Examiner and attached hereto as Exhibit A. True copies of my hand drawings for the various embodiments of the System solely invented by me, which were created prior to July 31, 2000 and ultimately used as informal drawing figures in my pending patent application, are attached hereto as Exhibit B.

5. A few months after my conception certain embodiment(s) of my claimed System were displayed in Halcyon's booth at the January 2000, DEMA trade show. See previously filed Affidavit of Joseph B. Stella ("Stella Affidavit"). Exhibits C-G attached hereto are true copies of Exhibits A-E referenced in the previously filed Stella Affidavit.

6. One of the embodiments for the claimed System which was displayed in Halcyon's January 2000 DEMA trade show and referred to in the Stella Affidavit is the same embodiment of

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the System shown in the August 22, 2004 Halcyon website page printout attached hereto as Exhibit

A.

7. At the time of the signing of his Affidavit, Mr. Stella was the President/General Manager North America of Johnson Outdoors Inc. At present, Mr. Stella's job responsibilities with Johnson Outdoors have expanded to a higher level of responsibility.

8. Johnson Outdoors Inc. is the owner of U.S. Application No. 09/628,836 ("the '836 Application"), which is the application cited by the Examiner under Section 102(f) to allegedly show that I allegedly did not invent the claimed subject matter currently pending in my application. Johnson Outdoors Inc. is also the owner of U.S. Patent No. 6,527,480 ("480 Patent") which is the patent cited by the Examiner under Section 102(e) which allegedly anticipates the claimed subject matter currently pending in my application.

9. It is clear from the above and the previously filed Stella Affidavit that my claimed System invention was invented solely by me well before the July 31, 2000 filing date of the '836 Application and priority filing date of the '480 Patent.

10. As previously declared and obvious by statements made by in the Stella Affidavit, at the time of the signing of the Stella Affidavit there was a dispute between my company and Johnson Outdoors regarding my allegations that Johnson Outdoors had violated a confidentiality agreement entered into between the parties. Our dispute was ultimately resolved by settlement and is not at issue. However, the fact that the factual statements about my product being on display by my Company in January 2000 stated by Mr. Stella in his Affidavit were made while I was in a legal dispute with Johnson Outdoors provides further credibility and support for the fact that the inventions claimed in claims 1-21 of the above-identified application were invented by me and not Johnson Outdoors or any other entity. These statements also evidence that I did not derive my claimed invention from Johnson Outdoors.

11. As I have previously declared, all critical dates regarding conception and actual reduction to practice for all embodiments of my claimed invention occurred prior to July 31, 2000.

12. I disagree with the Examiner's assertion that I have made contradictory declarations. The fact that the 09/916,414 application ("414 Application") lists me as a co-inventor is not in contradiction with any of the above statements or any statement made by me in any previous



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Serial No.: 09/730,116
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Declaration. Upon review of the '414 Application it is readily apparent that there are some differences in disclosure when compared to the disclosure of my pending application. These differences (such as band 68, see claim elastic band strap in Claim 1) were not contributed by me and do not appear in the disclosure of my application, nor does it appear in the claims pending in my application. These contributions were developed by Sergio Angelini and is the reason he is listed as a co-inventor in the '414 Application. Additionally, claims including the band or elastic band strap in the '480 Patent is not the same claimed invention to the inventions claimed in my current application. As the band (elastic band strap) does not appear in my disclosure or claimed invention, Mr. Angelini is not a co-inventor of the invention claimed in my pending application. Accordingly, I have not made any contradictory statements in any of my applications.

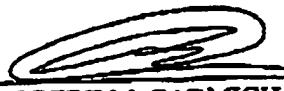
13. I am the sole inventor of all subject matter claimed in my pending application. Furthermore, all subject matter claimed in my pending application is unique and novel to me and was not derived from any third party, including, but not limited to Sergio Angellini, Johnson Outdoors, Scubapro, etc.

14. I incorporate by reference my previous Declarations filed in this Application.

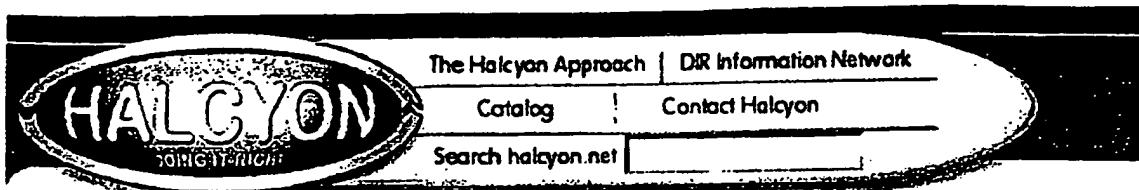
15. Thus, the citation of the '836 Application under Section 102(f) and U.S. Patent No. 6,527,480 under Section 102(e) are believed to be improper citations against my unique and novel invention and I again respectfully ask that these citations be finally withdrawn by the Examiner and the claims pending in my application be allowed by the Patent Office.

I declare further that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of this application and any registration resulting therefrom.

Respectfully submitted,



ROBERT M. CARMICHAEL
Applicant



The Halcyon Approach | DIR Information Network
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[Catalog](#) | [Multifunction Compensator](#) | [Backplates](#) | [Weighting Systems](#)

Active Control Ballast



Ditch that cumbersome weight belt and discover the benefits of the Halcyon MC's Active Control Ballast. The ACB system provides all of the benefits of an integrated weight system without any of the associated hassles. Conventional weighting systems are notorious for shifting during a dive and creating balance and fit problems. The Halcyon ACB system suspends its weight within the perfect fit of your 5 point Halcyon Secure Harness. With the weight bearing area now distributed closer to the diver's buoyant torso area, the Halcyon ACB dramatically improves diver trim and control. The ACB allows intelligent management of your ballast: you are in control of your buoyancy and trim both in and out of the water.

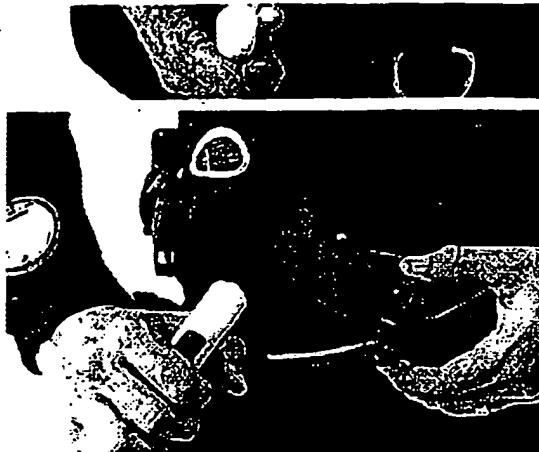
- No accidental weight releases
- Hip contoured ABS frame plates in both outer pocket and in weight containing pouch create a crisp contact area with your body and a perfect, comfortable fit
- Halcyon ACB eliminates the movement of stored weight through the use of Velcro within the weight pocket
- Stainless steel buckle and two inch webbing allows proper DIR attachment and quick release of canister light
- Rapid insertion or removal of weight
- Adding or decreasing weight has never been easier or more secure—no complicated ripcord rethreading necessary to replace ditched weights.
- Adjustable to hold as much or as little weight as you need Available in two sizes—Standard (10lb/side) and Large (15lb/side) capacity. When used



Aug, 2001

concurrently with the 5 lb Secure Harness Backplate, and the 6 lb BC Keel, the diver achieves a dramatic improvement in optimal underwater trim and weighting. Up to 41 pounds can be added to the diver in this manner, with up to 30 lb being instantly releasable. After release, reinsertion of weight pockets is an amazingly simple, six second or less operation.

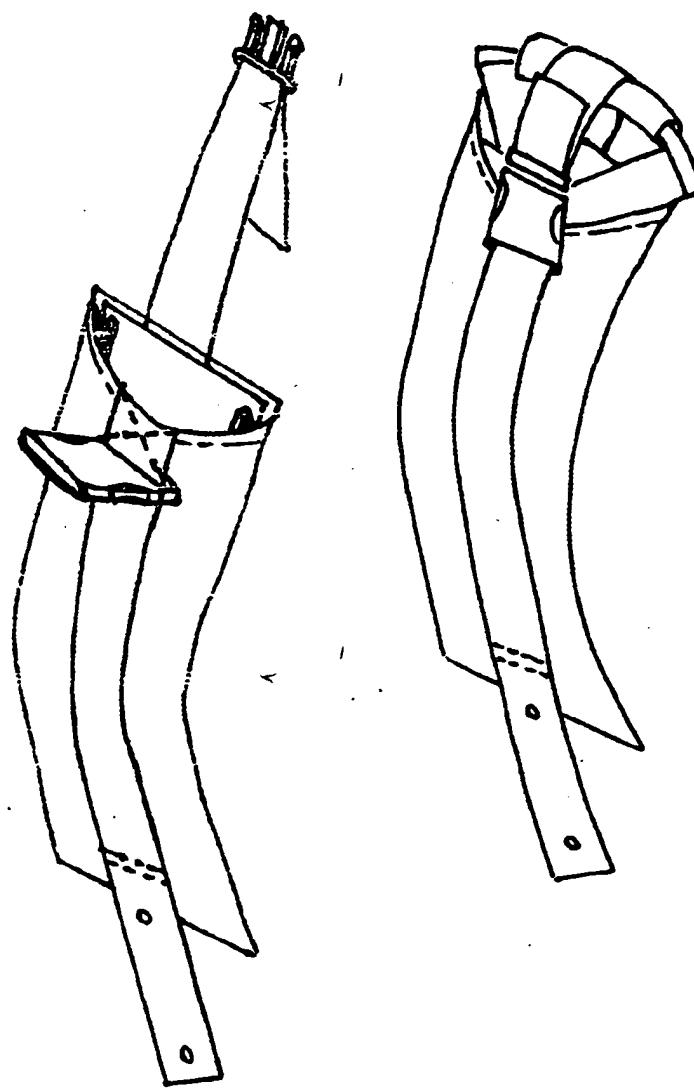
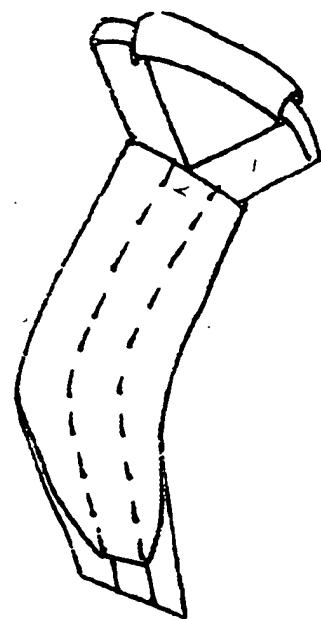
- **Specifications:** matching ABS plates, rugged ballistic nylon fabric with knurled handles and 2 inch side release Delrin buckles, made with true 3M Velcro



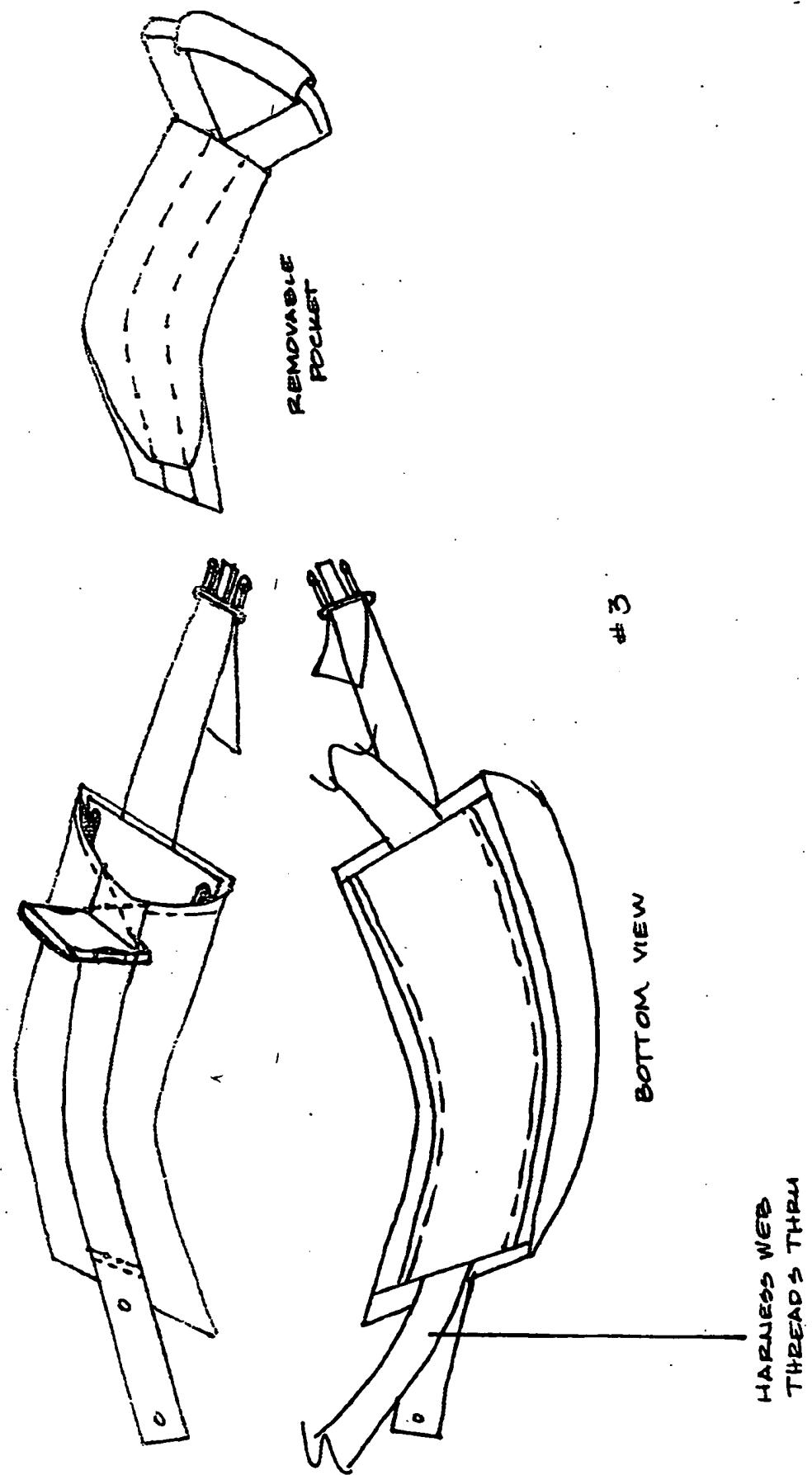
[Catalog](#) | [Multifunction Compensator](#) | [BC Keel and V-Weights \(Next\)](#)

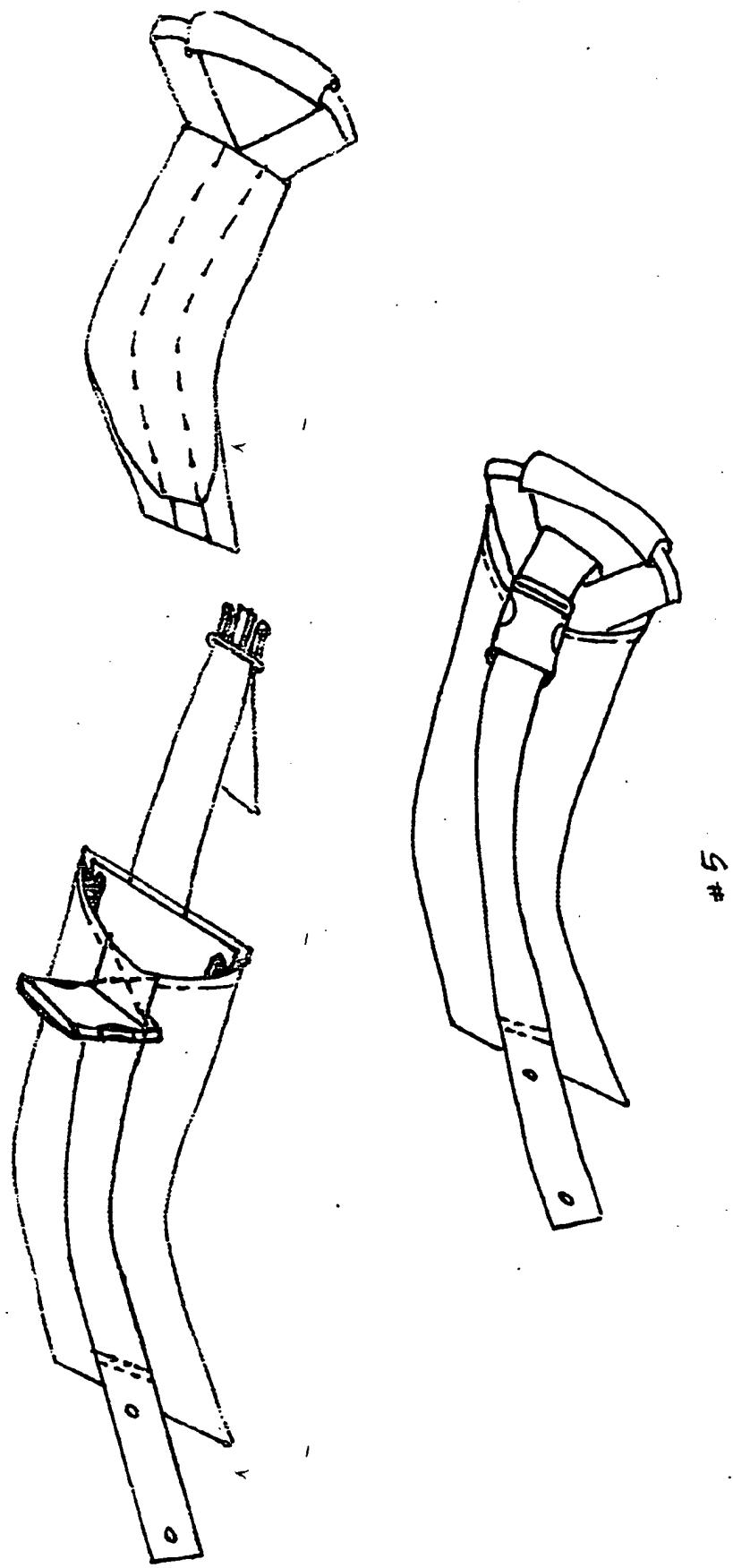
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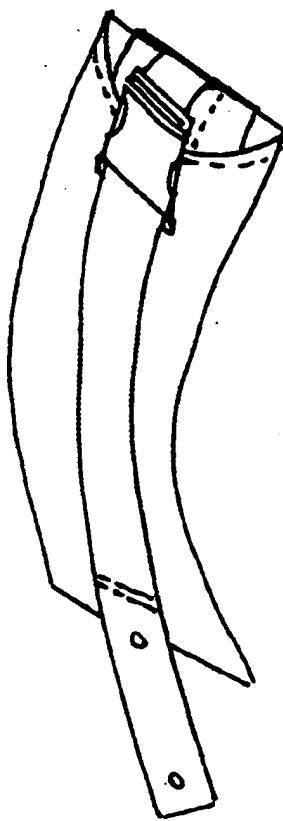
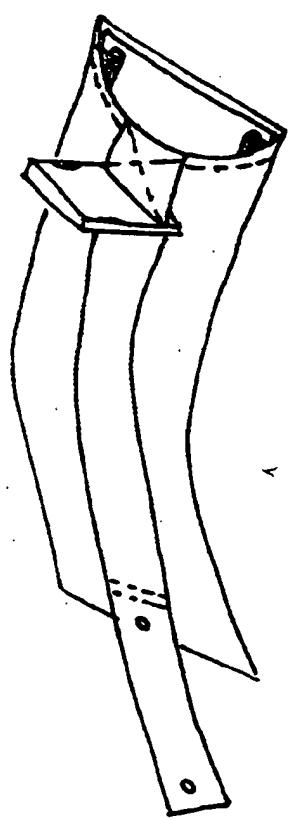
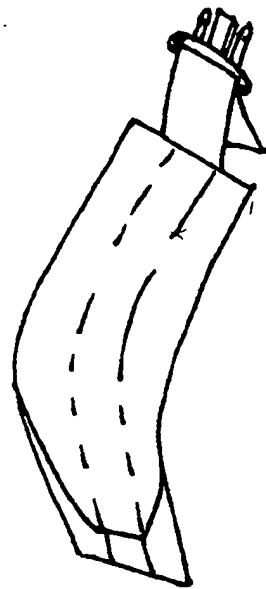


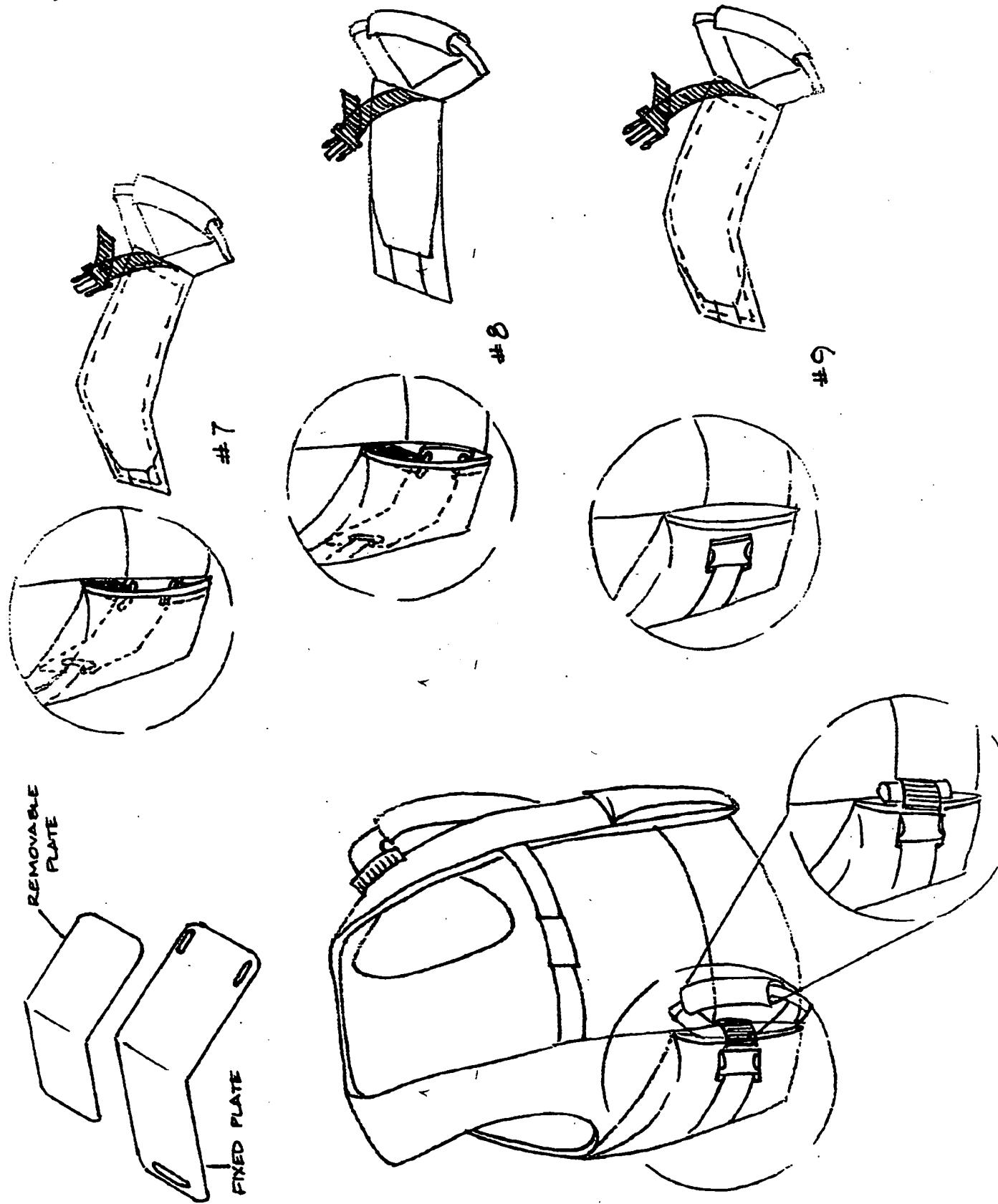
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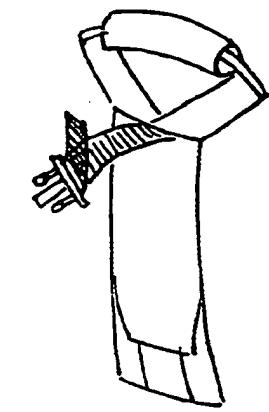




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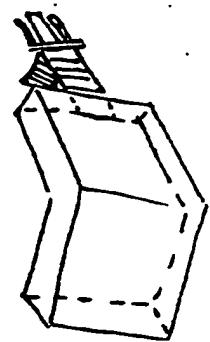




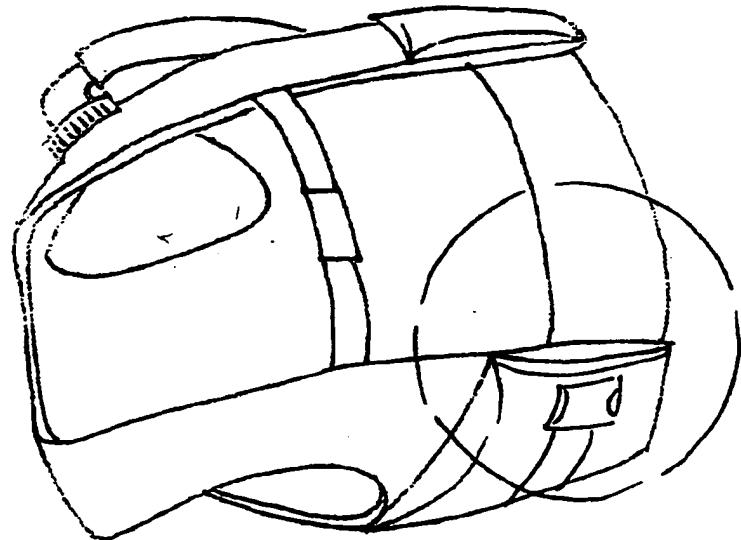
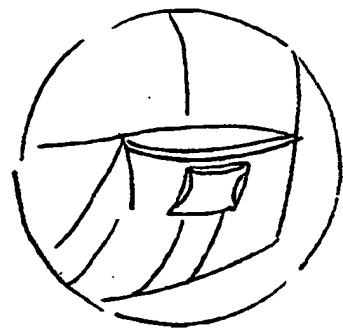
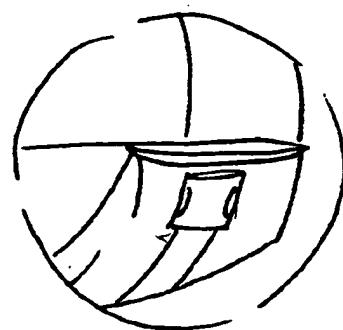
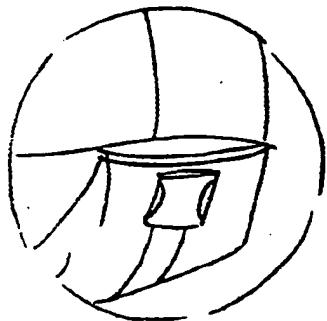
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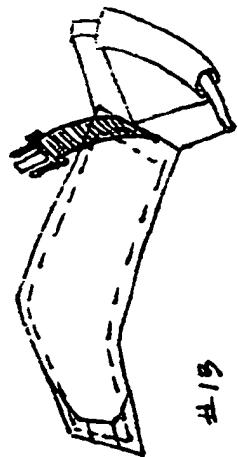
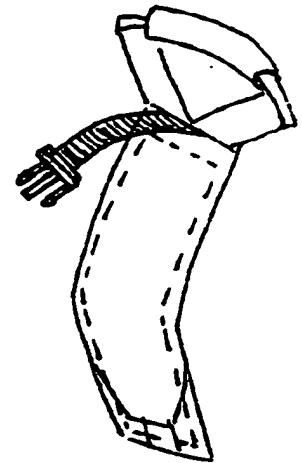
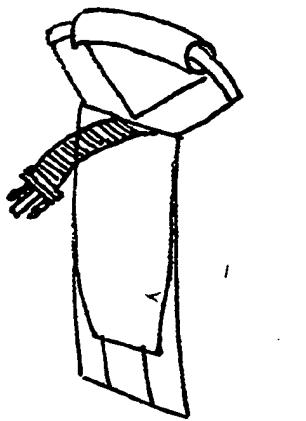


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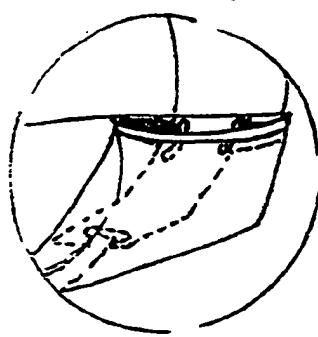
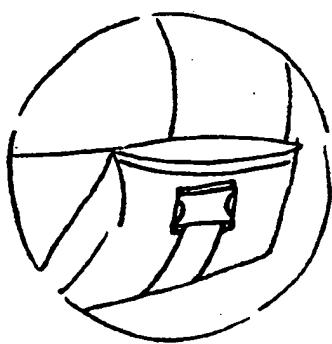
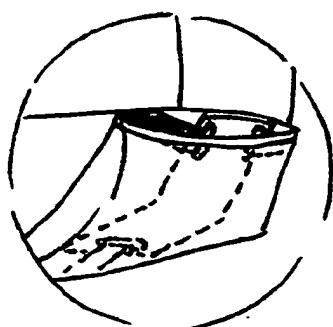
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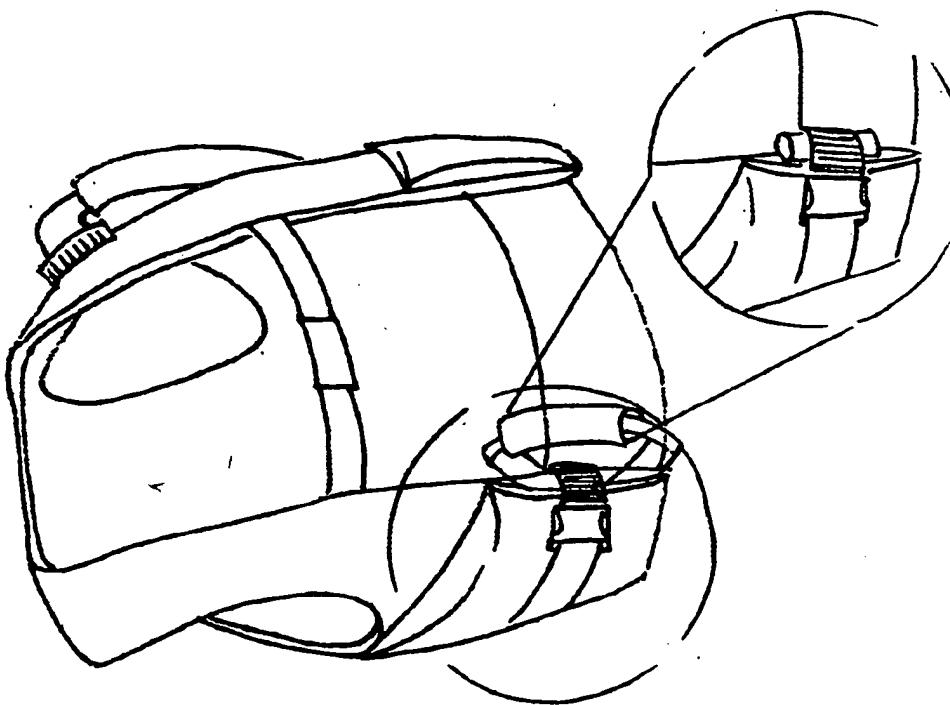
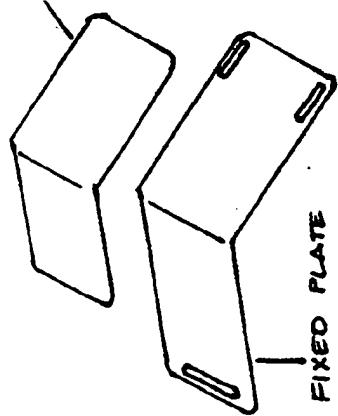


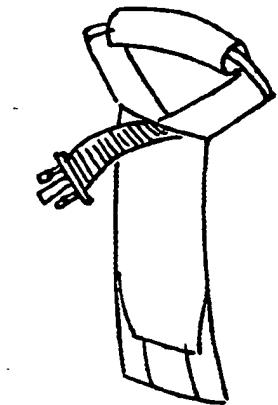
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REMOVABLE PLATE

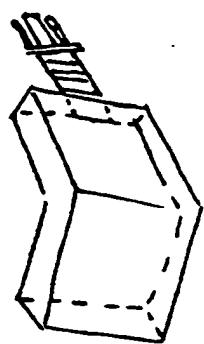




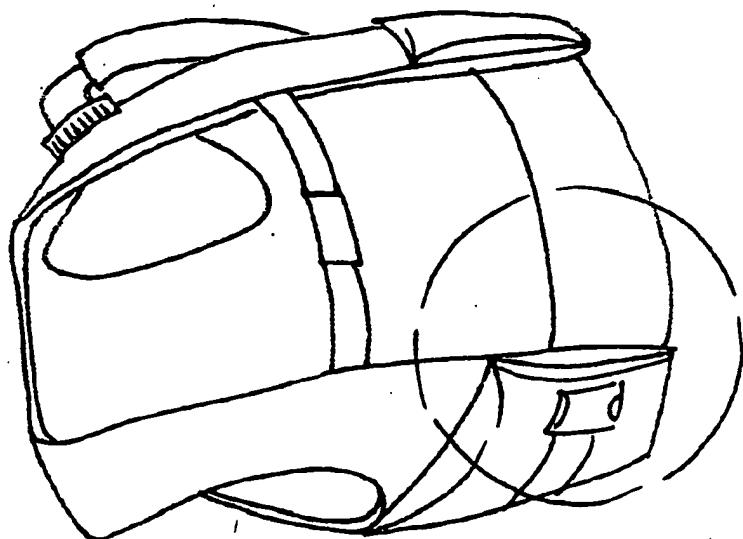
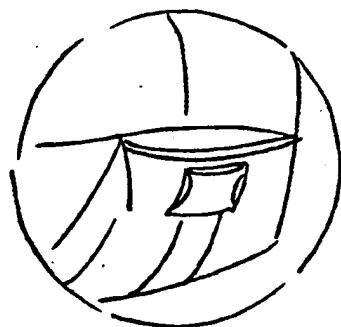
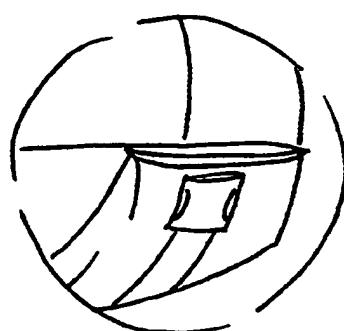
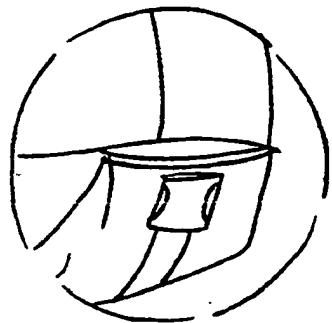
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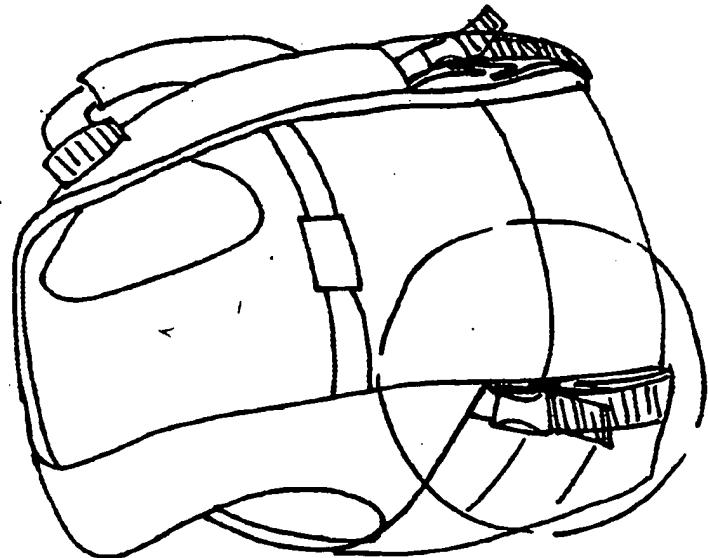
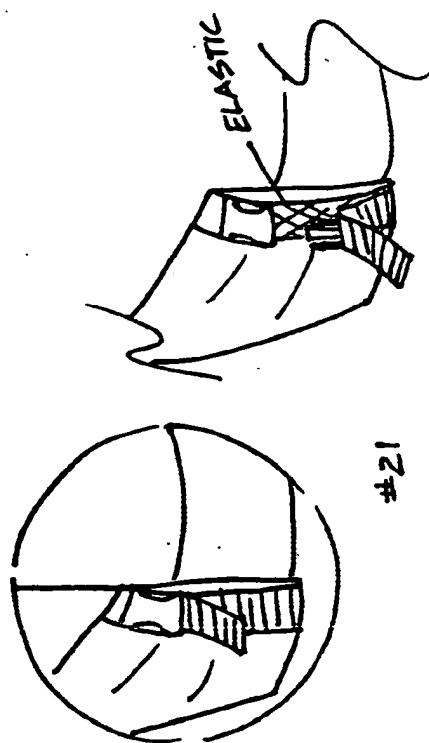
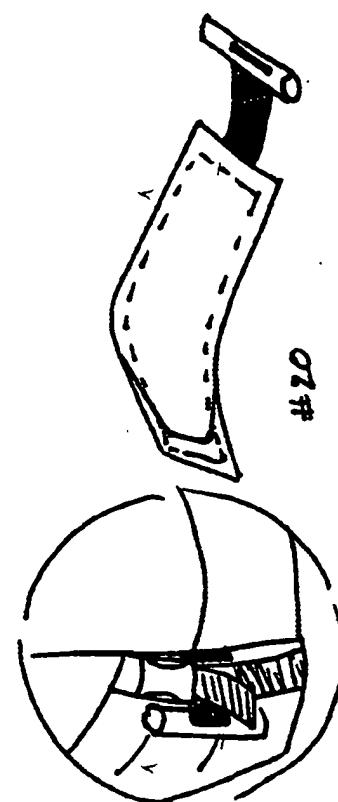
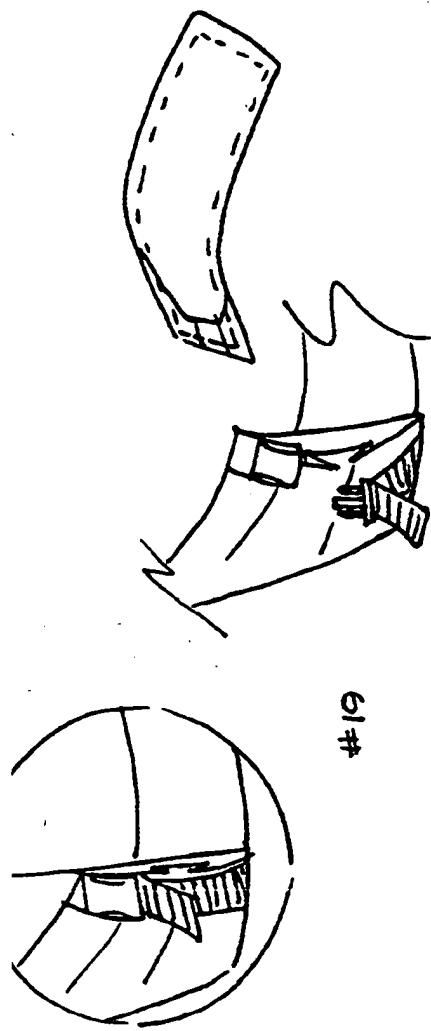


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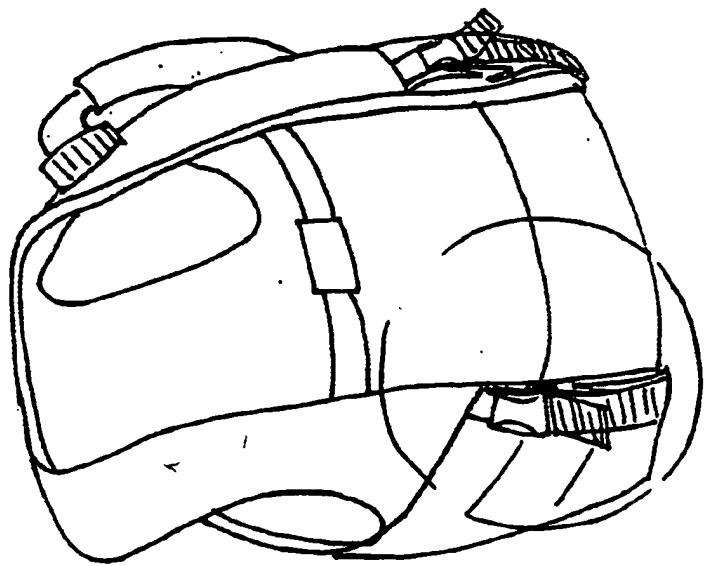
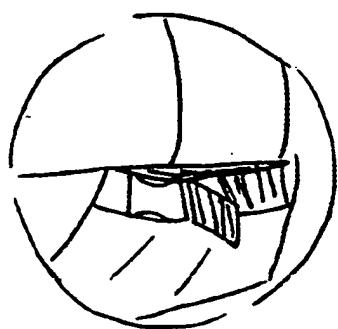
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BUOYANCY COMPENSATORS

Ladyhawk

ScubaPro's First Female BC

Specifically designed and constructed to meet the comfort and performance needs of female divers, the SCUBAPRO Ladyhawk BC employs the same patented aircell system as the Superdry BC to achieve the optimum combination of comfort, stability and lift. Coupled with the balanced weight, the Ladyhawk offers outstanding performance and superb neutral buoyancy characteristics.

- Tailored Specifically For Female Torso
- Backpack Style Harness
- Patented Back Flotation Buoyancy System Offers 31 lbs. of lift in all sizes.
- Integrated Weight System New quick-release double scuba belt design. Weight system is completely independent of storage pockets. Pouches hold up to 10 lbs. each.
- Pear Trim Pockets 10 to 5 lbs. non-removable weight each.
- Rugged 1000 Denier/420 Denier Nylon Packcloth
- Soft Neoprene Neck Roll
- Pull-Down Accessory Pocket
- Depth Compensating Waist Band
- Padded, Plush Lined Interior
- Airtel Expanders Allows user to expand fully without affecting fit and comfort in shoulders.
- Progressively Shaped Airtel Enables BC to inflate uniformly throughout its range of fit for superior underwater stability and minimum drag. Airtel virtually disappears when deflated.
- Available with either Air 2 or Balanced Power Inflator



EXHIBIT

Stella

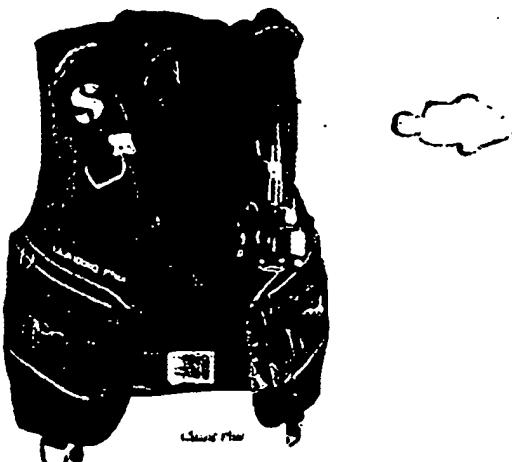
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SCUBAPRO | BUOYANCY COMPENSATORS | 2001

Classic Plus© 2001 SCUBAPRO, INC. All rights reserved.

The Classic Plus is an all-new improved version of the original Classic. Classic has a standard buoyancy jacket designed to fit over the vest of the most BCs on the market. The new Classic Plus combines the popular buoyancy jacket design with a newer, more comfortable design. The integrated buoyancy jacket technology and enhanced internal features to deliver optimum performance, stability and buoyancy. Even on the surface, the Classic Plus provides a take-up floating position, increasing over comfort and safety. A shoulder movement and trim adjustment is available and precise walking. The Classic Plus is an excellent choice for a broad range of diving conditions.

- Air Balanced Construction
Allows unrestricted air movement.
- Flow-Through Arms
Buoyancy jacket is a soft Flow-Through Arm design, allows easily to the harness from the water which way the arms is turned. The diver stays in control of the arms and underwater breathing.
- Neoprene Double-Coated 420 Denier Fabric
For extended life.
- Therm-Formed Foam Padded Back Pad
Provides exceptional comfort and helps reduce back weight in and out of the water.
- Depth Compensating Cummerbund
Complete w/ #4355 Web with stainless steel cam buckle.
- Integrated Weight System
New quick-release pouches (agent pouches) for maximum safety and comfort. Pouches hold up to 10 lbs each.
- Rear Trim Pockets
Pockets hold up to 5 lbs. non-releasable neoprene belt.
- Rotatable Piping
Allows diver to turn underwater and on the surface.



Classic Plus

- "Easy access" Side Chest Pockets
Patent Pending

- Soft Neoprene Neck Roll
For prolonged diving comfort

- Easy-Access Mesh Accessory Pockets

- Available with either Air 2 or Balanced Power Inflator

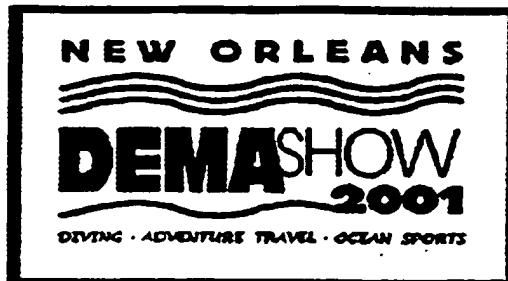
- Hand-Glued Finsel Seam Construction with Limited Lifetime Seam Warranty
Hand glued and assembled by craftsmen, this SCUBAPRO exclusive feature is the strongest, strongest seam that can be constructed. Years of field experience have shown that this seam lasts at least twice as long as any other seam construction method. So strong, SCUBAPRO offers a limited lifetime warranty on the Finsel seam for a decade of diving! - Adam



Diagram 1: Finsel Construction

1 - Side-to-side contact bonding	2 - Easy access side chest pocket
3 - Easy access mesh access pocket	4 - Soft neoprene neck roll
5 - Rotating arm cap, adjust and release	6 - Rear trim double stitched

For additional attendee and exhibition information click on the logo below.



JANUARY 24-27, 2001

Why should you exhibit at the 25th Annual DEMA SHOW 2001?

The DEMA Show, presented by the Diving Equipment & Marketing Association, is the unique event that combines all aspects of the international scuba and ocean sports industries with a strong measure of related aquatic accompaniments – apparel, personal watercraft, paddle sports, and windsurfing. The largest trade event of its kind in the world, the DEMA show is also the premier destination showcase for the global adventure dive travel industry. It's big. It's exciting. It's fun. And it delivers the buyers from all around the globe...121 countries to be exact!

This is a great opportunity to find new buyers and meet existing vendors.

YOU BELONG AT THE DEMA SHOW IF...

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- Your business is LOOKING TO EXPAND its international customer base as a hedge against possible market stagnation
- Your business is NEW TO THE DIVING OR ADVENTURE TRAVEL INDUSTRIES and seeking to establish strong brand identity in the shortest time possible
- Your business provides BUSINESS-TO-BUSINESS PRODUCTS AND SERVICES in support of small to mid-size retail businesses
- Your business is introducing A NEW PRODUCT OR TECHNOLOGY for the aquatic recreation industry

EXHIBIT
Stella
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- Your business is a PROVIDER of:
 - Accessories
 - Photographic & Video Equipment
 - Air Station Equipment & Lubricants
 - Apparel, Swimwear & Footwear
 - POS Software & Hardware
 - Bags & Carrying Devices
 - Boats, Inflatables & Marine Supplies
 - Regulators & Breathing Apparatus
 - Books, Periodicals & CDs
 - Business-to-Business Services
 - Safety & Rescue Products
 - Cylinders & Valves
 - Spearguns
 - Disabled Swimmer Products
 - Specialty Equipment, Lights
 - Flotation & Buoyancy Devices
 - Instructional Agencies & Educational Products
 - Sunglasses, Skincare & Pharmaceuticals
 - Instruments & Navigational Gauges
 - Travel, Resorts & Liveaboard
 - Jewelry, Gifts & Novelties

- Masks, Fins & Snorkels
- U/W Communication Systems
- Merchandising & Point of Purchase Displays
- U/W Propulsion Vehicles
- Metal Detectors
- Watches & Accessories
- Paddle Sports & Wind Surfing Equipment
- Personal Watercraft
- Wet Suits, Dry Suits
- Weight Systems & Weights

WE HAVE THE BUYERS YOU WANT TO SEE!

General Information:

Show Dates and Hours:

Wednesday, January 24, 10 a.m. – 6 p.m.

Thursday, January 25, 10 a.m. – 6 p.m.

Friday, January 26, 10 a.m. – 6 p.m.

Saturday, January 27, 10 a.m. – 5 p.m.

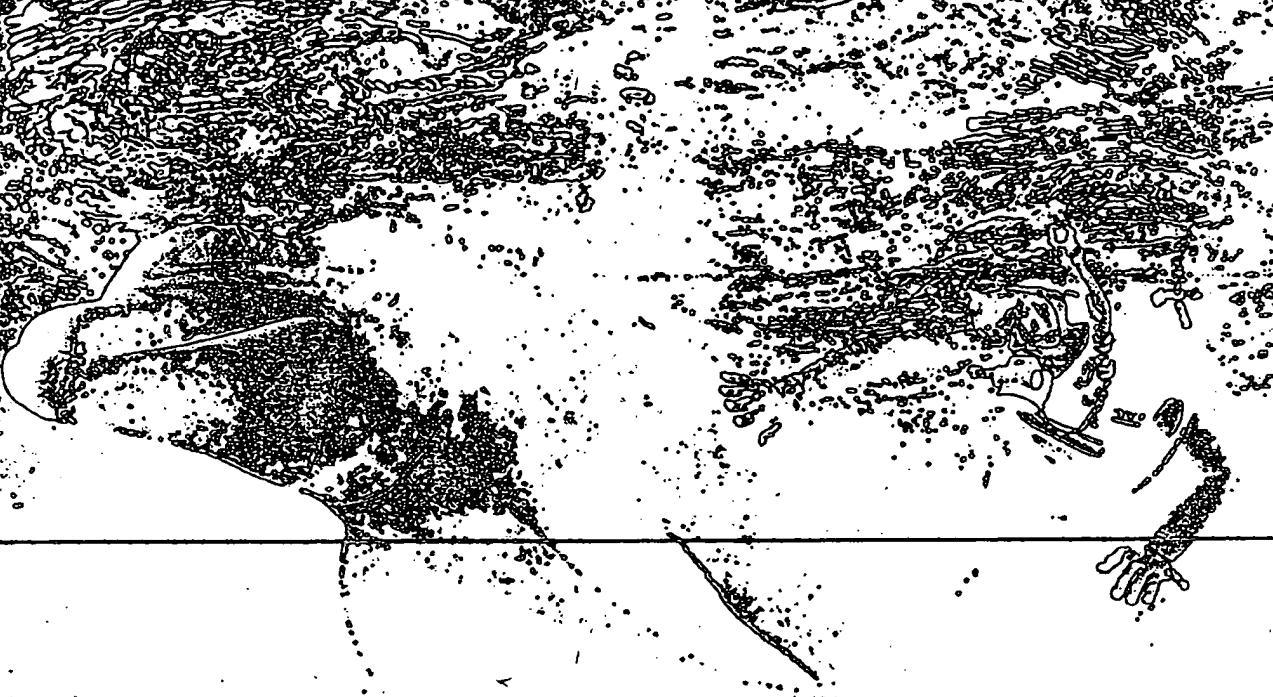
Show Information:

\$1495 (members)

exclusive: *Chammas dives!*

skin Diver

THE WORLD'S MOST READ SCUBA DIVING & SNORKELING MAGAZINE SEPTEMBER 1993



A dive with dolphins

Land of the giants

to hell and back

holiday gear wish list

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McGraw-Hill
McGraw-Hill Education

EXHIBIT

Stella
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Spend the Holidays with the Angels

Enjoy free-diving comfort for the entire family with Brownies' new Direct Drive Third LUNG. With over two and one half times the performance of previous designs, now four divers can venture to depths of 60 feet or more. Spend the holidays with the angelfish, the starfish, your family and friends.

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Hands Free Night Diving

EXTREME EXPOSURE

Transform night diving into an adventure of spectacular color and discovery. Rechargeable Explorer Pro lights out-last and out-shine conventional dive lights. When combined with our revolutionary HID light head, Explorer Pro lights are brighter and whiter than everything but the sun. The most effective diver to diver communication device.

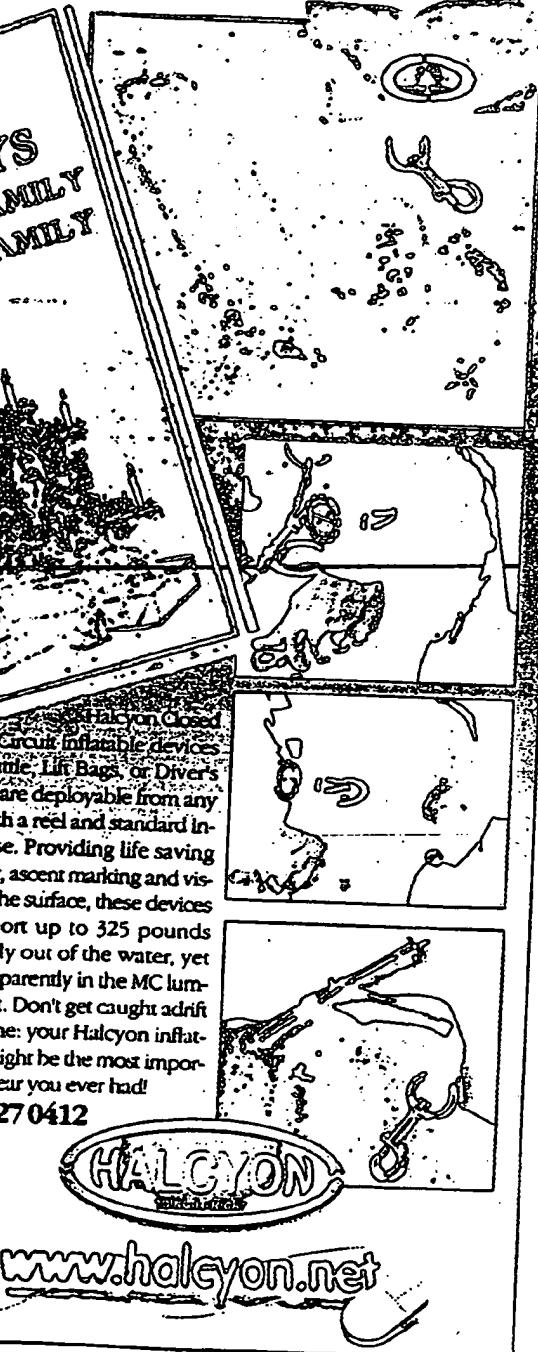
Designed by Explorers for the Explorer In You

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Underwater Swiss Army Knife...

The Multi-Function Compensator is the next step in the evolution of buoyancy compensation. Each component of the MC system improves the quality of your dive through reduced drag, precise buoyancy control, with added safety and utility components built in.



**NON-DISCLOSURE
CONFIDENTIALITY AGREEMENT**

THIS AGREEMENT, entered into this 11th day of December by and between Treber Industries, Inc. dba Brownies Third Lung, of Ft. Lauderdale (hereinafter referred to as "BTL") and Johnson (hereinafter referred to as "JLA"),

WHEREAS, BTL has designed and developed at considerable expense certain techniques, procedures, and/or products related to scuba diving, surface supplied air, tank fill and air mixing systems, rebreathers, skin diving, and other water related sports and other products and accessories related to the aforementioned categories.

WHEREAS, in the course of the production, sale and distribution of these products and in the course of business dealings related to potential mergers, acquisitions or joint ventures it becomes necessary to disclose proprietary information to BTL, where BTL will be referred to as the "disclosing party" and JLA will be referred to as the "receiving party";

NOW THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. **PROPRIETARY INFORMATION** is defined as any information, either written or oral, originated by or peculiarly within the knowledge of the disclosing party, or its suppliers, which is not generally available to others. Proprietary information shall include both business and technical information, including but not limited to, business plans, product plans, proposal plans, technical specifications, test results, process and fabrication information, drawings, manuals, technical presentations, etc. Such information shall /should be identified prior to disclosure with an appropriate marking such as PROPRIETARY, CONFIDENTIAL, LIMITED RIGHTS, RESTRICTED RIGHTS, PRIVATE, etc. If such information is disclosed verbally, then in order to be received the protection pursuant to this agreement such proprietary information must be reduced to tangible form otherwise in compliance with this Agreement and furnished to the receiving party within ninety (90) business days of the original verbal disclosure. All proprietary information shall remain the property of the disclosing party and shall be returned immediately, together with all copies hereof, upon written request of disclosing party.

However, such information shall NOT be considered to be proprietary information or otherwise subject to protection pursuant to this Agreement if such information:

- a. Is established by the receiving party to have been known to it at the time of receipt; or
- b. Is or becomes publicly known through no wrongful act of the receiving party; or
- c. Is received from a third party without similar restrictions and without breach of this Agreement; or
- d. Is approved for release by written authorization of the disclosing party.

The receiving party agrees to disclose such proprietary information only to its employees having a need to know, and not to any third parties or consultants.

The receiving party agrees to use such information only in furtherance of the purposes set forth above.

EXHIBIT

Stella
D

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The proprietary information furnished pursuant to this Agreement may never be incorporated into a technological effort or proposal by the receiving party. No representation to the contrary is now or ever has been made by BTL.

2. The primary but non-exclusive points of contact for the transmission and control of proprietary information subject to the protection of this agreement are:

Tracer Industries, Inc.
940 NW 153rd Street
Fort Lauderdale, FL 33311

Name: Robert Cimino and Sandy Shurtliff Kelly, Friend
Telephone: 305-463-6570 264-884-1624

3. This agreement shall apply to proprietary information disclosed within twelve (12) months of the date first mentioned above (unless the Agreement is terminated prior thereto), and the protection afforded by this Agreement for such proprietary information shall continue notwithstanding any such termination for a period of five (5) years from the date of last disclosure.

4. BTL Personnel are not authorized to receive any information or documents in confidence. All disclosure of any type information to BTL Personnel shall be made and received on a non confidential basis, unless otherwise agreed to in writing by and authorized officer of BTL.

5. The receiving party represents and warrants that no technical data furnished to it by the originating party shall be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the receiving party, nor shall any technical data be exported from the United States without complying with all requirements of the International Traffic in Arms Regulation and the Export Administration Act, including the requirement for obtaining an export license, if applicable. The receiving party shall first obtain the written consent of the originating party prior to submitting any request for authority to export any such technical data. The receiving party shall indemnify and hold the originating party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the receiving party to comply with this clause or the International Traffic in Arms Regulations and the Export Administration Act.

6. The parties agree that this Agreement shall be deemed to have been executed in, governed by and interpreted in accordance with the laws of the State of Florida.

7. This Agreement contains the entire understanding between the parties relative to the protection of proprietary information and supersedes all prior and collateral communication, reports and understandings, if any, between the parties. No changes, modifications, alterations, or additions to any provision hereof shall be binding unless contained in writing signed by the parties hereto. However, if the parties hereinafter enter into a contract having the same general purpose as stated above and the contract requires or permits the use of disclosure of proprietary information disclosed pursuant to this Agreement, then the terms of such contract requiring or permitting such use of disclosure shall, to the extent, supplement (but not supersede unless specific reference is made to this Agreement) the provisions of this Agreement.

8. No other rights or obligations other than those expressly recited herein are to be implied by the Agreement with respect to patents, trademarks, inventions and information. Specifically, no license is granted, either directly or indirectly, under any patent owned by the disclosing party.



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Through the receipt and use of proprietary information furnished pursuant to this Agreement, the receiving party accepts and ratifies this Agreement in its entirety, notwithstanding any defect in the execution thereof.

Tribor Industries, Inc.

Signature: 

By: Robert Carmichael

Title: President

Date: 12-16-99

Johnson Worldwide Associates, Inc.

Signature: By: Kelly T. GorinTitle: Vice PresidentDate: 12/16/99

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NO. 355 P.4/7

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**NON-DISCLOSURE
CONFIDENTIALITY AGREEMENT**

THIS AGREEMENT, entered into this 16th day of December by and between Trebor Industries, Inc., dba Brownies Third Lung, of Ft. Lauderdale (hereinafter referred to as "BTI") and Johnson
Welding
Equipment, having a place of business in Keweenaw, WI (hereinafter referred to as "JWA"),

WHEREAS, BTI has designed and developed at considerable expense certain techniques, procedures, and/or products related to scuba diving, surface supplied air, tank fill and air mixing systems, rebreathers, skin diving, and other water related sports and other products and accessories related to the aforementioned categories.

WHEREAS, in the course of the production, sale and distribution of these products and in the course of business dealings related to potential mergers, acquisitions or joint ventures it becomes necessary to disclose proprietary information to JWA, where BTI will be referred to as the "disclosing party" and JWA will be referred to as the "receiving party";

NOW THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. **PROPRIETARY INFORMATION** is defined as any information, either written or oral, originated by or peculiarly within the knowledge of the disclosing party, or its suppliers, which is not generally available to others. Proprietary information shall include both business and technical information, including but not limited to, business plans, product plans, proposal plans, technical specifications, test results, process and fabrication information, drawings, manuals, technical presentations, etc. Such information shall be identified prior to disclosure with an appropriate marking such as **PROPRIETARY, CONFIDENTIAL, LIMITED RIGHTS, RESTRICTED RIGHTS, PRIVATE**, etc. If such information is disclosed verbally, then in order to be received the protection pursuant to this Agreement such proprietary information must be reduced to tangible form otherwise in compliance with this Agreement and furnished to the receiving party within ninety (90) business days of the original verbal disclosure. All proprietary information shall remain the property of the disclosing party and shall be returned immediately, together with all copies hereof, upon written request of disclosing party.

However, such information shall NOT be considered to be proprietary information or otherwise subject to protection pursuant to this Agreement if such information:

2. Is established by the receiving party to have been known to it at the time of receipt; or
- b. Is or becomes publicly known through no wrongful act of the receiving party; or
- c. Is received from a third party without similar restrictions and without breach of this Agreement; or
- d. Is approved for release by written authorization of the disclosing party.

The receiving party agrees to disclose such proprietary information only to its employees having a need to know, and not to any third parties or consultants.

The receiving party agrees to use such information only in furtherance of the purposes set forth above.

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The proprietary information furnished pursuant to this Agreement may never be incorporated into a technological effort or proposal by the receiving party. No representation to the contrary is now or ever has been made by BTL.

2. The primary but non-exclusive points of contact for the transmission and control of proprietary information subject to the protection of this agreement are:

Trebor Industries, Inc.
540 NW 1st Street
Fort Lauderdale, FL 33311

Name: Robert Cannichael or Sandy Starzini

Telephone: 954-462-9570

3. This agreement shall apply to proprietary information disclosed within twelve (12) months of the date first mentioned above (unless the Agreement is terminated prior thereto), and the protection afforded by this Agreement for such proprietary information shall continue notwithstanding any such termination for a period of five (5) years from the date of last disclosure.

4. BTL Personnel are not authorized to receive any information or documents in confidence. All disclosure of any type information to BTL Personnel shall be made and received on a non confidential basis, unless otherwise agreed to in writing by an authorized officer of BTL.

5. The receiving party represents and warrants that no technical data furnished to it by the originating party shall be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the receiving party, nor shall any technical data be exported from the United States without complying with all requirements of the International Traffic in Arms Regulation and the Export Administration Act, including the requirement for obtaining an export license, if applicable. The receiving party shall first obtain the written consent of the originating party prior to submitting any request for authority to export any such technical data.

6. The receiving party shall indemnify and hold the originating party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the receiving party to comply with this clause or the International Traffic in Arms Regulations and the Export Administration Act.

6. The parties agree that this Agreement shall be deemed to have been executed in, governed by and interpreted in accordance with the laws of the State of Florida.

7. This Agreement contains the entire understanding between the parties relative to the protection of proprietary information and supersedes all prior and collateral communication, reports and understandings, if any, between the parties. No changes, modifications, alterations, or additions to any provision hereof shall be binding unless contained in writing signed by the parties hereto. However, if the parties hereinafter enter into a contract having the same general purpose as stated above and the contract requires or permits the use of disclosure of proprietary information disclosed pursuant to this Agreement, then the terms of such contract requiring or permitting such use of disclosure shall, to the extent, supplement (but not supersede unless specific reference is made to this Agreement) the provisions of this Agreement.

8. No other rights or obligations other than those expressly recited herein are to be implied by the Agreement with respect to patents, trademarks, inventions and information. Specifically, no license is granted, either directly or indirectly, under any patent owned by the disclosing party.

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Through the receipt and use of proprietary information furnished pursuant to this Agreement,
the receiving party accepts and ratifies this Agreement in its entirety, notwithstanding any
defects in the execution thereof.

Trebor Industry Inc.

Signature: 

By: Robert Carmichael

Title: President

Date: 12-16-99

Johnson Worldwide Associates Inc.

Signature: 

By: Kelly T. Griswold

Title: Vice President

Date: 12/16/99

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—Original Message—

From: Robert M. Carmichael [SMTP:halcyon@halcyon.net]
<mailto:[SMTP:halcyon@halcyon.net]>
Sent: Thursday, January 11, 2001 4:00 PM
To: Kelly Grindle
Cc: Trevor Will; Todd Rathe; Alton Hall; sandy storzeri; Mandouh Ashour; Mario Valenzuela; Joe Stella
Subject: Trade Secret(s), NDA violation and Patent rights problems

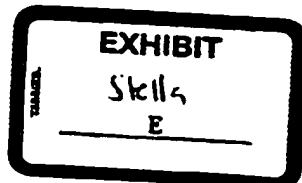
Dear Kelly,

I have been delaying this message in hopes that my friends within the sales department could come to resolution without corporate and/or legal intervention.

I will discuss the most disconcerting issue in brevity, as I am sure your time is as scarce as the rest on this Cc list preparing for DEMA and closing out last year. Supporting detail has been provided to the appropriate individuals including a mutually agreed upon and continued NDA protected exchange of Patent applications between our respective Patent firms.

December 16th 1999 at SCUBAPRO headquarters in San Diego, Mandouh, Joe, Mario, and Sergio where present during your signing of a 2-year duration NDA. The agreement was specifically constructed to allow open disclosure of trade secrets both patented, pending and otherwise. At that meeting a variety of sample products where demonstrated by myself to the SCUBAPRO staff. This was clearly everyone's, especially Sergio's, first exposure to the finest drop weight system to date (ACB). It was made clear at that meeting and in subsequent email, personal and verbal exchanges that a variety of embodiments and modifications to that system where in the works and patent application(s) would be filed prior to release.

The printed catalog for DEMA 2000 documents the disclosure of one the specialty versions of this invention. Most importantly, the general theory of ACB (active control ballast) was openly discussed both in spirit and in function. I saw the bells and whistles go off in Sergio's head at that meeting and subsequently on the phone and in person. Sergio and Tom approached PADI to seek an acceptable opinion on the broad usage of ACB (positive acting control of releasable weight by means of a ambidextrously accessible mechanical fastening device) in the instructional community. On or about the end of July 2000 Sergio filed a patent application with claims exacting my invention. I was amazed and asked what the intent was. Sergio suggested that he had reviewed all of my-issued Patents with the assistance of patent consul and found no existing issued patents that would prevent him from doing so. I suggested that the filing was erroneous in nature and even



fraudulent and that it would be in everyone's best interest to quickly resolve this. Sergio's response can only be interpreted in two ways: 1. Sergio is/was naïve of the basis of Patent law and the core of the NDA and/or 2. General disrespect and dishonestly prevail over decency-something I did not expect of this group after years of mutual confidence building. Either way, Sergio is not the inventor, did not come up with this on his own, and fails on all bases with regard to use of this invention.

Some of the problem areas:

1. As a small businessman with over twenty years invested in developing diving gear, in particular totally unique weighting systems for my own company benefits, it is critical that HALCYON and BTL maintain exclusive rights to my novel inventions in order to maintain the forward momentum of the companies. SCUBAPRO is now producing and marketing my weight system with a Patent Pending label on display without compensation to the rightful inventor. This damages both my respective entities abilities to seek market position based upon superior design. The whole spirit behind patent law is to protect against theft such as this. The NDA was designed to prevent this from occurring.
2. Our release of the newest embodiment of the ACB design was scheduled for DEMA 2001. Scubapro has taken much of that momentum and your dealers are referring to the weight system in the field as either my design by name or Halcyon's ACB.
3. There is only one criminal infraction possible in Patent Law and that is for false filling of the inventor's name. I challenge anyone with knowledge of the course of events that lead up to this to suggest Sergio developed a "novel" invention. Patent law allows a 12 month grace period for filing in the US (protecting our original cold water embodiment) and total protection for anything pending and not disclosed (our 2001 and the erroneous SCUBAPRO fall catalog version now shipping).
4. Joe suggested in a phone meeting over a month ago that the law does not require any payment of royalties on a patent until issue. He is correct in that narrow situation but is not considering the whole picture. The NDA protects my rights for two years minimum and specifically states; "The proprietary information furnished pursuant this Agreement may never be incorporated into a technological effort or proposal by the receiving party. No representation

to the contrary is now or ever has been made by BTL." This does not require an issued patent for protection.

5. DEMA begins in less than two weeks. The weight system is ours and we had planned to use this as one of two new inventions. SCUBAPRO is obviously already disturbing our exclusive use of a novel development to encourage market share advancement via technology. I have been optimistically patient about coming to resolution mostly out of disbelief that this is happening with what I thought was an honest and virtuous group.

Two remedy options: (For settlement purposes without prejudice) Time is of the essence due mainly to the dynamics of DEMA and current breach damages.

1. Immediately cease and desist the use and distribution of all BC/s and or weight systems with the ACB system. Cease distribution and recall all catalogs with mention of the ACB system. Make a public statement to this effect and pay \$100,000 in cash for use and damage to BTL/HALCYON to date. This must be done prior to DEMA 2001 opening time. This will only get us back to square one and will not provide any continued use of the product or marketing advantages. A license for use of trade secrets and patent rights will be optional.
2. Pay \$250,000 in cash prior to the end of next week for fully earned use of the current design during the Patent Pending period and continue use as is. An amendment will be amicably constructed to inform the US Patent office of the rightful inventor. A license fee of \$4 dollars per unit will be granted for the duration of the Patent life once issued on all products incorporating this specific invention.

Both of these offers will expire at the close of business on Friday the 12th of January unless I receive acknowledgement of intent to act. Everyone involved will note that the cost continues to escalate. This situation is dynamic and continues to cost me an inordinate amount of time, frustration, and monetary compensation. As a small businessman in a rare vertically integrated company with many unique values my time on constructive projects is paramount to the overall success of my various entities thus supporting the value.

Our New Orleans based Law Firm and local Florida counsel have been asked to prepare to file for injunctive relief prior to DEMA if the damage and breach continues without compensation. We will have no choice but to protect our rights both in the court of law and right out in public. Trevor Will Esq. has indicated that resolution is

preferable on behalf of SCUBAPRO, therefore my outline of resolution. I think it is also worthy of noting that I have withheld payment on my SCUBAPRO account. I continue to support SCUBAPRO publicly but it is with tongue in cheek. I would like to remind everyone involved that I did offer the majority of our scuba account business to the tune of over \$400,000 in annual purchases in place of the partial of \$135,000 last year. At this moment I find it unpalatable to spend a dime with SCUBAPRO. I would like this to change immediately and get back on par with our positive path.

Sincerely yours,

RMC

PS. To whom it may concern within Johnson Outdoors, please forward this notice to the appropriate individuals with a need to know position regarding its potential and verify my assumptions of email addresses. Please send my regards to Both Helen and Sam as well.

Robert M. Carmichael President / CEO

www.browniedive.com <<http://www.browniedive.com>>

Family Dive Machines since 1969

www.halcyon.net <<http://www.halcyon.net>>

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SCUBA air/nitrox/helium, compressor and gas mixing systems

www.gue.com <<http://www.gue.com>>

Global Underwater Explorers

dive training excellence, research, & exploration

Office 954-462-5570 x-303

Cellular 954-214-3727

Home office (until 11pm EST) 954-564-3549

940 NW 1st Street

FORT LAUDERDALE, FL 33311